HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

No. W.P. No. 512/05 S/S

Smt. Poonam Devi

Vs.

State of Uttaranchal.

Approved for reporting. (Yes)

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~~No approved for reporting~~

Date of Decision: 6.5.2005

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 512 (S/S) OF 2005

Smt. Poonam Devi, W/o late Udai Singh, R/o Village and Post Office Karwari, District Dehradun. .....Petitioner.

Versus

1. State of Uttaranchal through the Secretary Forest Department, Government of Uttaranchal, Dehradun.
2. Principal Chief Conservator of Forest, Uttaranchal, Nainital, Camp at 87 Rajpur Road, Dehradun.
3. Chief Conservator of Forest, Garhwal Region 85 Rajpur Road, Dehradun.
4. Conservator of Forest, Shivalik Circle, 5 Tilak Road, Dehradun.
5. Divisional Forest Officer, Dehradun Forest Division, 5 Tilak Road, Dehradun. .....Respondents.

Sri P.C. Jhingan, learned counsel for the petitioner.
Learned Standing counsel.

Dated: 06.05.2005

Hon'ble Rajesh Tandon, J.

Both the parties have agreed that let the matter be decided finally directing the respondents to consider the representation of the petitioner in the light of the facts.

Briefly stated, the husband of the petitioner late Sri Udai Singh had been working in the Forest Department on daily wage basis since January, 1984 under the Divisional Forest Officer, Dehradun Forest Division, 5 Tilak Road, Dehradun.

In paragraph 4 of the writ petition, it has been mentioned that in pursuance of the order dated 7th July, 1999, the husband of the petitioner was getting the minimum salary and allowances. Paragraph 4 is quoted below:-

"That Hon'ble Justice O.P. Garg as he then was had been pleased to pass interim order in the aforesaid writ petition the

operative portion of the order dated 07.07.99 is reproduced below for ready reference:-

"In the meantime, if the petitioner's are actually working on daily wage basis for more than 240 days and their claim for regularization in service has already not been decided, the respondents shall ensure payment of such minimum salary and allowances to the petitioner which are admissible to the regularly appointed class IV employees of the State Government, performing similar duties.

Sd/- O.P. Garg.

7.7.1999."

The husband of the petitioner died on 09.11.1999.

In paragraph 8 of the writ petition, it has been stated that the petitioner was engaged on daily wage as Plantation Chowkidar at Kadwapani Nursery under the Asha Rodi Range of Dehradun Forest Division under the Dying in Harness Rules.

Learned counsel for the petitioner has submitted that he was appointed in 1984 as a daily wager and he would have been regularized in service had he not been killed or murdered during his duties on 09.11.1999.

The grievance of the petitioner is that although the petitioner is working on daily-wage basis in Asha Rodi Range of the Dehradun Forest Division in January, 2004, but she is getting a consolidated salary of Rs. 1,740/- per month. Due to sudden death of her husband, the petitioner is facing acute financial crisis in maintaining the family of the deceased Udai Singh on such a meager wages.

Learned counsel for the petitioner has submitted that in view of the decision in ***Smt. Maya Devi Vs. State of U.P. and others reported in 1998(79) F.L.R. Page 608,*** the

petitioner is entitled to be absorbed under the Dying in Harness Rules, 1974.

In ***Writ Petition No. 91 of (S/S) of 2003 Bhaguli Devi Vs. State of Uttaranchal and others,*** similar controversy arose, where the employee concerned has worked on daily-wage for about 16 years and this Court has held as under:-

"For the reasons recorded above, since the petitioners' husband was continuing in employment for more than 16 years, petitioner is entitled 5 to get benefit of the Uttar Pradesh Recruitment of Dependants of Government Servants Rule 1974, which has been adopted by the State of Uttaranchal.

In view of the above discussion, I direct the respondents Authorities to consider the claim of the petitioner for providing her appointment under Uttar Pradesh Recruitment of Dependants of Government Servants Rules 1974 within a period of six weeks from the date of production of certified copy of this order."

In ***Anju Misra v. General Manager, Kanpur Jal Sansthan, Kanpur 2004 (1) Page 201*** after relying upon the judgment in ***Santosh Kumar Misra v. State of U.P. and others 2002 (1) UPLBEC, 237***, it has been held as under:-

"9. According to the submission of the learned Counsel for the State, a daily wager or work charge employee who is engaged by the State Government or any department of the State Government cannot be treated as a Government Servant within the definition of Rule 2 of the aforesaid Rules. Qualifying the above argument, the learned Counsel for the State further submitted that though an employee who is not regularly appointed is covered by the definition in view of sub-clause (iii)

of Rule 2(a) but in that case such employee must have put in three years continuous service, that too in regular vacancy in such employment. Since, the petitioner's father was earlier a daily wager or muster roll employee and later on worked as work charge employee, therefore, it cannot be said that he was appointed regularly or had worked in regular vacancy."

"14. The practice of appointing daily wagers or work charge employees is very much prevailing in the State of Uttar Pradesh and instances are no less in number where the daily wager or work charge employees in the Government Department have been allowed to continue for years together, namely, 15 years, 20 years and 25 years or till they actually reach the age of superannuation to which they may not be entitled, not being a Government Servant but, they are disposed with their engagement or attaining the age of superannuation. The practice of appointing such daily wagers and work charge employees has constantly been a matter of great concern for the judiciary and for that matter, the Apex Court has many a times issued directions for framing schemes so as to accommodate all daily wagers of long standing duration and work-charge employees as a reglar employees. It would be needless to mention that such a scheme has been ordered to be framed by the Court in the department of Rural Engineering Services in the Forest Department and many other department."

In Meean Devi Chaudhary v. Chief Engineer, U.P. Public Works Department, Lucknow (2002) 2 UPLBEC 1421, the said controversy has also been decided with the following observations:-

"A women cannot be denied appointment under this Rule on the alleged ground that her deceased husband was not working on regular basis in view of Meena Devi Chaudhary v.

Chief Engineer, U.P. Public Works Department, Lucknow (2000) 2 UPLBEC 1421 at 1422 (All).”

Further in view of the judgment of the Apex Court in the case of ***Pushpa Lata Dixit vs. Madhyamik Shiksha Parishad and others 1991 (18) ALR 509*** and ***Smt. Sushma Gosain and others vs. Union of India and others, AIR 1989 S.C., 1976,*** so far as the appointment on compassionate ground should not be delayed as after the death of bread-earner, the whole family is starving.

Similar view has been taken in the case of ***State of Manipur Vs. Thingujam Brojen (1996) 9 SCC Page 29, further in Smt. Saroj Devi Vs. State of U.P. 1999 (3) Educational and Service Cases Page 215,*** the benefit has also been extended to the temporary employees.

In view of the aforesaid facts and circumstances, the writ petition is allowed. The respondents are directed to consider the appointment as well as emolument payable to the petitioner under the Government Servant Dying in Harness Rules, 1974 within period of three months from the filing of the certified copy of the order.

(Rajesh Tandon, J.)

Dated: 06.05.2005
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